IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1417

WELFORD WIGLESWORTH, JR.,

Petitioner,

v.

TEAMSTERS LOCAL UNION NO. 592, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE

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No.

WELFORD WIGLESWORTH, JR.,

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TEAMSTERS LOCAL UNION NO. 592, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Welford Wiglesworth, Jr. respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is set forth in Appendix A, *infra*. The

order of the United States Court of Appeals for the Fourth Circuit denying the petition for rehearing and suggestion for rehearing *en banc* is set forth in Appendix B, *infra*. The opinion of the Court of Appeals is reported at 93 L.R.R.M. 2801 (4th Cir. 1976) The order of the United States District Court for the Eastern District of Virginia, Richmond Division, dismissing the Complaint pursuant to the judgment and mandate rendered by the United States Court of Appeals for the Fourth Circuit is set forth in Appendix C, *infra*. The judgment of the District Court is set forth in Appendix F, *infra*. The Findings of Fact and Conclusions of Law of the District Court are set forth in Appendix D, *infra*. The injunction entered by the District Court is set forth in Appendix E, *infra*.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit, dated November 12, 1976, was entered on November 12, 1976 (App. A, *infra*). A timely petition for rehearing and suggestion for rehearing *en banc* were denied on January 4, 1977 (App. B, *infra*). By order dated April 7, 1977, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including April 13, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether the Court of Appeals erred in holding that Plaintiff should have been required to exhaust his union remedies before seeking redress in district court, despite the fact that the district court, after four days of testimony held that to require exhaustion of Teamsters' Union remedies would have been futile, a denial of substantial justice, and a frustration of the Labor Management Reporting and Disclosure Act of 1959, as Amended.

STATUTES INVOLVED

The applicable statutes are the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. §§411(a)(1), 411(a)(2), 411(a)(3), 411(a)(4), 412, 415, 431(c), 481(e) and 529 (App. I, *infra*); and Fed. R. Civ. P 52(a) which states:

> "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."

STATEMENT OF THE CASE

Welford Wiglesworth, Jr. brought this action in the United States District Court for the Eastern District of Virginia, Richmond Division. He alleged that Teamsters Local Union No. 592, and its president, William A. Hodson, had violated his rights under Titles I and II of the Labor Management Reporting and Disclosure Act, hereinafter referred to as "L.M.R.D.A.," 29 U.S.C. §411 *et seq.*

In 1972, Welford Wiglesworth, Jr., a member in good standing of Teamsters Local Union No. 592, hereinafter referred to as "Teamsters," ran for president of his local against William A. Hodson, the incumbent. Hodson defeated Wiglesworth in this election. Wiglesworth believed that this election was fraudulently conducted. He decided to protest the outcome of this election within his internal union grievance procedure.

Following Teamsters' union procedures, Wiglesworth first appealed to the International Brotherhood of Teamsters,' hereinafter referred to as "International Union," Joint Council, which is the governing body over the local unions. A hearing was held in South Richmond, Virginia. W. Fleming Campbell, a chief International Union official who conducted part of the Teamsters' election of 1972, was summoned by Wiglesworth, pursuant to Teamsters' procedures, to testify on his behalf at this hearing. Campbell refused to attend. Wiglesworth's protest was subsequently denied by the Joint Council.

Wiglesworth appealed the Joint Council's decision pursuant to the Teamsters' constitution to the President and Chairman of the General Executive Board of the International Union, Frank Fitzsimmons. Also, pursuant to the Teamsters' constitution, he appealed to every member on the Executive Board by certified mail. Wiglesworth to date has not received any response from Fitzsimmons or anyone else on the Executive Board.

After having fruitlessly exhausted his Teamsters' remedies, Wiglesworth appealed his case to the United States Department of Labor. After an investigation, the Department of Labor determined that probable cause existed to believe that election fraud occurred in the Teamsters election of 1972. A re-run election was held by the Department of Labor. Hodson won the re-run

election also. By this time Wiglesworth had totally lost faith in the Teamsters' grievance procedures.

Wiglesworth remained politically active in the Teamsters. Shortly after the re-run election of 1972, however, Wiglesworth began to encounter serious problems with the Teamsters. President Hodson began to show open hostility towards Wiglesworth. These problems grew more severe as the Teamsters election of 1975, in which Wiglesworth was an announced candidate, approached. Hodson, who chaired the Teamsters' meetings, refused to allow Wiglesworth to express himself at these meetings. Hodson would consistently rule Wiglesworth out of order when Wiglesworth would try to participate in his union's meetings and voice his opinion and the opinion of his supporters within the Teamsters. On numerous occasions Wiglesworth asked Hodson to live up to the dictates of the L.M.R.D.A. and advise the membership of their rights under the L.M.R.D.A. Hodson refused to do so, however. Instead Hodson would humiliate Wiglesworth before the membership.

President Hodson's hostility towards Wiglesworth reached its peak in the fall of 1974. At the Teamsters' meetings of September and October, 1974, Hodson improperly refused to allow Wiglesworth to voice his opposition and the opposition of his supporters to a proposition concerning a dues increase promulgated by Hodson. Yet Hodson, himself, and Hodson's supporters spoke at length in support of the dues increase. Hodson threatened to throw Wiglesworth out of these meetings if Wiglesworth persisted in attempting to voice opposition. Hodson denied Wiglesworth pertinent financial material. Hodson refused to honor Wiglesworth's requests to advise the membership of their rights under the L.M.R.D.A.

Hodson, furthermore, humiliated Wiglesworth before the membership of the Teamsters at these meetings.[1]

On December 3, 1974, Wiglesworth filed suit against the Teamsters and Hodson under Title I, Section 102 of the L.M.R.D.A., 29 U.S.C. §412. On December 26, 1974, the Teamsters and Hodson filed their Motion to Dismiss under Rule 12(b) of the Federal Rules of Civil Procedure on the grounds that Wiglesworth had failed to exhaust internal union remedies and procedures. The district court denied this motion on February 5, 1975 (App. H, *infra.*) On February 18, 1975, the Teamsters and Hodson served their answer and counterclaims for libel, slander, insulting words, and malicious prosecution. On September 23, 1975, the district court, upon motion by Wiglesworth, dismissed the counterclaims for lack of subject matter jurisdiction.

On September 7, 1975, after a four-day trial, the district court issued its Findings of Fact and Conclusions of Law (App. D, *infra*). It found that the Teamsters and Hodson had violated Wiglesworth's rights under the L.M.R.D.A. (App. D, *infra,* p. 25a). The court further found that, based upon Wiglesworth's previous unsuccessful experience with the Teamsters' grievance procedures, Wiglesworth could not be expected to have confidence in the grievance procedure (App. D, *infra*, p. 22a) and that Wiglesworth did not have to exhaust his internal grievance procedures prior to filing suit since such exhaustion would have been futile (App. D, *infra,* p. 25a).

On September 26, 1975, the district court entered its injunction against the Teamsters and Hodson (App. E,

[1]The detailed fact pattern concerning the confrontations between Hodson and Wiglesworth are set forth in the district court's Findings of Fact and Conclusions of Law (Appendix D, *infra*) and in the interest of brevity need not be restated here.

infra). It also awarded Wiglesworth compensatory damages, attorney fees, costs and expenses (App. E, *infra*). That same day judgment was entered (App. F, *infra*).

On November 12, 1976, the United States Court of Appeals for the Fourth Circuit reversed the district court's judgment and remanded the case with directions to dismiss the complaint (App. A, *infra,* p. 11a). The Court of Appeals concluded that Wiglesworth should have been required to exhaust his available union remedies before seeking redress in district court (App. A, *infra,* p. 11a).

REASONS FOR GRANTING REVIEW

A.

THE FOURTH CIRCUIT HAS CREATED A CONFLICT AMONG THE CIRCUITS AS TO THE DOCTRINE OF EXHAUSTION OF REMEDIES UNDER L.M.R.D.A.

With the exception of the fourth circuit, it is the general rule of law that where a union has taken a position in opposition to that of a plaintiff and makes no indications that it will alter its views, a plaintiff need not exhaust his union remedies under Section 102 of the L.M.R.D.A., 29 U.S.C. §412, before filing suit in federal court. See *Farowitz v. Associated Musicians of Greater New York, Local 802,* 330 F.2d 999, 1002-1003 (2nd Cir. 1964); *Amalgamated Clothing Workers of America Rank and File Committee v. Amalgamated Clothing Workers of America, Philadelphia Joint Board,* 473 F.2d 1303, 1308, (3rd Cir. 1973); *Semanick v. United Mineworkers of America District #5,* 466 F.2d 144 (3rd Cir. 1972); *Verville v. International Ass'n. of Mach. & Aerospace Workers,* 520 F.2d 615, 621 (6th Cir. 1975). In such situations exhaustion of union remedies is not necessary, since there is reason to believe that a resort to

an appeal within the union would be a futility.[2] *Farowitz, supra.*, 330 F.2d at 1002; *Verville, supra.*, 520 F.2d at 620.

The fourth circuit's holding in the case at hand completely disregards the above case law in the second, third and sixth circuits. The law in the fourth circuit as a result of this case is that regardless of the number of times a plaintiff has fruitlessly exhausted his union remedies before filing suit and regardless of his legitimate belief that exhaustion of remedies would be futile in light of his previous unsuccessful appeals within his union and the consistent position taken against him by his union

[2]In the case at hand, Wiglesworth had fruitlessly exhausted his internal union remedies in the election of 1972. At that time he had exhausted his internal union grievance machinery all the way up the union chain of command to the President of the International Union, Frank Fitzsimmons. To date he still has not heard on the status of his grievance from Mr. Fitzsimmon's office. Wiglesworth acted reasonably, therefore, by filing suit in federal court without exhausting his internal union grievance procedures. As the district court so aptly put it:

> "At that time [1972] the Plaintiff followed the appeal procedures of the union and instead of being met with helpfulness on the part of the hierarchy of the union, he was met with the sort of obstinancy that Mr. Campbell illustrated here on the witness stand today: instead of coming to his aid by giving evidence fairly and impartially and honestly, he answered by saying that since he had not been summonsed in accordance with established procedures, he would not respond at all.
>
> The president of the International Union, Mr. Fitzsimmons, was appealed to in the course of these disputes, and the undisputed evidence is that the president refused to respond in any way to Plaintiff's entreaties. . . . *It would seem to me that the Plaintiff having had that experience would not be expected to have confidence in the union grievance procedures.* . . ." (App. D, *infra*, p. 22a) (Emphasis supplied).

officials, a plaintiff must exhaust his internal union remedies before filing suit.[3] This holding is clearly in contrast with the holding in *Farowitz, supra, Amalgamated Clothing Workers of America Rank & File Committee, supra; Semanick, supra, Verville; supra.*

B.

THE FOURTH CIRCUIT HAS CREATED A STANDARD CONCERNING APPELLATE REVIEW THAT IS IN CONFLICT WITH OTHER CIRCUITS

The Court of Appeals' holding that Wiglesworth should have been required to exhaust his available union remedies before filing suit creates a standard concerning

[3]The Court of Appeals found that Wiglesworth had two paths open to him within his internal union grievance procedure under article XIX of the Teamster's constitution (App. A, *infra*, p. 8a). The Court of Appeals disregarded the fact that Wiglesworth has good reason to believe that the utilization of either procedure would have been futile. The Court of Appeals disregarded the power structure of the Teamsters and the fact that those in power are potent dictators whose influence is far reaching. The Court of Appeals disregarded the fact that Hudson's executive board consisted of Hodson appointees and those who had run on his ticket in the 1972 election, and charges before that board under Article XIX, Section 1(a) would have been futile. The Court disregarded the fact that Wiglesworth had fruitlessly tried to exhaust his remedies in 1972, under Article XIX, Section 3(a), through an appeal to the International Union's Joint Council and upward to the International President. The Court disregarded the fact that the Teamsters' Constitution, Article XIX does not afford a member the right to redress grievances under the L.M.R.D.A., such as (1) freedom of speech; (2) freedom to participate in the union; (3) freedom to speak out against the union without fear of redress; (4) the right to be advised of his rights under the L.M.R.D.A.; (5) the right to be given financial information and numerous other rights under the L.M.R.D.A. Whereas here, the appeal structure is illusory and inadequate to redress a party's grievance under the L.M.R.D.A., it is not necessary to exhaust union procedures. *Burke v. International Brotherhood of Boilermakers Iron Shipbuilders, Forgers and Helpers*, 417 F.2d 1063 (9th Cir. 1969).

appellate review of the exhaustion of remedies doctrine which is in conflict with the standards applied by other courts of appeals. The 5th, 6th and 7th Circuits have held that the determination of whether a union member must exhaust his internal union remedies prior to instituting court action is made by the district court in its discretion. See *Verville, supra,* 520 F.2d at 620; *Fulton Lodge No. 2 of the Int'l. Ass'n. of Machinists and Aerospace Workers, AFL-CIO v. Dix,* 415 F.2d 212 (5th Cir. 1969); *McCraw v. United Ass'n. of Journeymen,* 341 F.2d 705 (6th Cir. 1965); *Ryan v. Int'l. BHD of Elec. Workers,* 241 F. Supp. 1292, aff'd. 361 F.2d 942 (7th Cir. 1966), *cert.* denied 385 U.S. 935. Under these cases an appellate court's review of a district court's ruling on the issues of exhaustion of remedies is limited to whether or not the district court abused its discretion. Under the fourth circuit's decision in this case, the Court of Appeals can broadly review the district court's decision concerning exhaustion of remedies and set that decision aside without a finding or conclusion that the lower court abused its discretion. Clearly, if this case is allowed to stand, it creates a conflict in standards between the circuits.

C.

THE FOURTH CIRCUIT HAS GROSSLY DEPARTED FROM THE ACTUAL AND USUAL COURSE OF JUDICIAL PROCEEDINGS

The Court of Appeals in holding that Wiglesworth should have been required to exhaust his available union remedies before seeking redress in the district court grossly departed from the actual and usual course of judicial proceedings. Under the Federal Rules of Civil Procedure, the findings of a trial court sitting without a jury cannot be set aside unless clearly erroneous. See Fed. R. Civ. P 52(a); *Frazier v. Curators of University of*

Missouri, 495 F.2d 1149 (8tn Cir. 1974). Although no such finding was made by the Court of Appeals nor could it have been, the fourth circuit set aside the specific findings of fact and conclusions of law concerning the district court's findings that Wiglesworth did not have to exhaust his internal Teamsters grievance procedures.

The Court of Appeals actually went ahead and made its own findings of fact. It found the actions taken against Wiglesworth constituted at best, a departure from the basic rules of orderly, democratic procedures (App. A. *infra,* pp. 9a-10a).[4] It found that the facts necessary

[4]The Court of Appeals held that exhaustion was necessary for the actions taken against Wiglesworth were not within the concept of "voidness" under *Eisman v. Baltimore Reg. Joint Bd. of Amal. Cloth Wkrs.,* 352 F.Supp. 429, 434, (D. Md. 1972) aff'd 496 F.2d 1313 (4th Cir. 1973) and *Libutti v. Di Brizzi,* 337 F.2d 216 (2nd Cir. 1964), aff'd on rehearing 343 F.2d 460 (2nd Cir. 1965), for the facts necessary to show a serious violation of Wiglesworth's rights were neither conceded nor easily determinable (App.A, *infra,* p. 7a). The Court of Appeals erred. The actions taken against Wiglesworth served the same purpose as if he was physically thrown out of the union. From the elections of 1972 forward, he was not allowed to participate in his union, nor to speak in union meetings. Nor was he given access to financial materials to which he was entitled. There is no difference between told to sit down and shut up every time a union member tries to speak and being barred from union membership. As Judge Warriner rightfully observed from the testimony of one of the Teamsters chief witnesses:

> "I think that one of the most significant pieces of testimony in the trial of this case was the testimony of one of the witnesses who said, *'we don't throw them out anymore, we just set them down'.*" (App. D, *infra,* p. 24a). (Emphasis supplied).

Wiglesworth was a candidate for the presidency of the Teamsters twice in 1972. He was also an announced candidate for office in 1975. When Wiglesworth attempted to speak, he was not just acting on his own behalf. He was also acting and speaking on behalf of numerous union members. When Wiglesworth was told to sit down ahd shut up over and over again, the union was denying Wiglesworth's constituency the right to be heard. Clearly, the Court of Appeals erred in concluding this case did not fall within the "voidness" theory.

to show a serious violation of Wiglesworth's rights under the L.M.R.D.A. were neither conceded nor easily determinable (App. A, *infra*, p. 7a).[5] It also found that, although there was no testimony to that effect, if the Secretary-Treasurer of the Teamsters had presided over the grievance procedure, there probably would have been no prejudice against Wiglesworth in the Teamsters' grievance procedure (App. A, *infra*, p. 12.a.)

Clearly, the Court of Appeals departed from the usual course of judicial proceedings by setting aside the findings of fact of a court sitting without a jury and in substituting its own findings of fact. For those of the district court in violation of Fed. R. Civ. P. 52(a).

D.

THIS CASE INVOLVES FEDERAL QUESTIONS OF SUBSTANCE NOT PREVIOUSLY DETERMINED BY THIS COURT

This case at hand involves federal questions of substance not previously determined by this Court. It involves the applicable standards which must be applied by a federal court in determining when under Title I, Sec. 101(a)(4) of the L.M.R.D.A., 29 U.S.C. §411(a)(4), a union member must exhaust his union remedies.[6] It

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[5]The Court of Appeals compared the case at hand to *Harris v. International Longshoreman's Asso., Local 1291*, 321 F.2d 801 (3rd Cir. 1963) (App. A, *infra*, pp. 7a-8a). That case is quite different from the situation at hand. In *Harris* the plaintiffs did not question the fact that the grievance machinery could have given them the relief they sought, nor had they come to the conclusion that the grievance process would have been futile. Plaintiffs in *Harris* were not running for office. They were not consistently denied free speech or humiliated before the membership. Unlike Wiglesworth, they had no reason to believe that their union would not promptly act on their grievances.

[6]The Court of Appeals failed to address the issue of whether a plaintiff need exhaust union remedies under Title I, Sec. 105, 29

[footnote continued]

involves the question of whether or not the grievance procedures set out in the Teamsters constitution, which is the same constitution of the International Union, comply with the dictates of the L.M.R.D.A. It involves the question of whether a union constitution complies with the dictates of L.M.R.D.A. These questions must be resolved by this Court once and for all.

This action involves the right of a union member to run for office free from threats of intimidation, humiliation, or coercion by his union. It involves the right of a union member to speak out freely at his union meetings expressing his dissent and the dissent of his political supporters without fear of being thrown out of the meetings. It involves the rights of a union member to function fully and actively in his union. It involves the mandate put upon unions to advise the membership of their rights under the L.M.R.D.A. This court must set standards balancing these rights against the proviso of L.M.R.D.A. that exhaustion of remedies may be required.

This case is important not only to Wiglesworth, but to every union member in the United States. As a result of the Wiglesworth decision, a union member will not be able to seek Court relief until he is physically thrown out of the union and has exhausted his union procedures regardless of their futility. If this decision is allowed to stand, a union may circumvent the requirements of the L.M.R.D.A. by ruling a political dissident out of order each time he attempts to speak. A union incumbent will

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U.S.C. 415 and Title II, Sec. 201(c), 29 U.S.C. 431(c) before filing suit. Wiglesworth had proven that the Teamsters failed to advise the membership of their rights under the L.M.R.D.A. pursuant to the dictates of 29 U.S.C. 415. He also had proven that the Teamsters failed to provide the union with financial information under 29 U.S.C. 431(c). There is no requirement under either section that a plaintiff need exhaust his union remedies. See *Coratella v. Roberto*, 56 L.R.R.M. 2068 (D.C. Conn. 1964).

be able to freely humiliate and threaten a political foe in a union meeting. Free speech will be effectively done away with. Clearly, this is not what Congress' purpose was in enacting the L.M.R.D.A. For one of the chief purposes of the L.M.R.D.A., was to afford union members the same rights that their officers had to participate fully in their union without fear of oppression and humiliation. *Retails Clerk Union Local 648 v. Retail Clerk's Int'l Ass'n*, 299 F. Supp. 1012 (D.C.C. 1969).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED NOVEMBER 12, 1976

No. 75-2191

WELFORD WIGLESWORTH, JR.,
Appellee,

v.

TEAMSTERS LOCAL UNION NO. 592,
WILLIAM A. HODSON, President
of Teamsters Local Union No. 592,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND
D. DORTCH WARRINER, DISTRICT JUDGE

ARGUED: MAY 5, 1976 DECIDED: NOV. 12, 1976

Before HAYNSWORTH, Chief Judge; CRAVEN, Circuit Judge,
and FIELD, Senior Circuit Judge

Jay J. Levit (Stallard and Levit on brief) for Appellants; Gregory M. Murad and Stephen Daniel Keeffe (Keeffe Brothers on brief) for Appellee.

FIELD, Senior Circuit Judge:

The plaintiff, Welford Wiglesworth, Jr., a member of Teamsters Local Union No. 592 (Local), field this action pursuant to Section 102 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §412,[1] alleging that the Local and its president, William A. Hodson, had violated certain of his rights under the Act. Specifically, the complaint charges that during two meetings of Local No. 592, Hodson prevented the plaintiff from exercising his rights of freedom of speech, refused to give him information on the financial affairs of the Local, and denied his request that the Union membership be informed of their rights under LMRDA. The district court found in favor of the plaintiff and entered an order granting injunctive relief and awarding compensatory damages in the amount of $13,000.00, attorney fees of $19,000.00 and costs and expenses in the amount of $2,797.86. The defendants have appealed.

The evidence disclosed a deep and longstanding hostility between Wiglesworth and the defendant Hodson. In 1972 the plaintiff had run against Hodson for president of the Local and had been defeated. Wiglesworth disputed the election, and after an unsuccessful pursuit of administrative appeals within the Union, he filed a complaint with the Department of Labor under Title IV[2] of the LMRDA. The Department found

[1] Section 102 provides that:

"Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. * * *"

[2] 29 U.S.C. §§481-483.

probable cause to believe that there had been violations of Title IV, whereupon the Local agreed to conduct a new election under the supervision of the Secretary of Labor. In the rerun election Hodson was again successful, the plaintiff running last in a field of three candidates for the office.

The evidence presented to the district court focused upon two meetings of the Local, the first of which was held on September 8, 1974. The principal item on the agenda of that meeting was a proposal to increase the Union dues. Wiglesworth spoke in opposition to the proposed increase, and he testified that his discussion was cut short and he was ruled out of order by Hodson who was the presiding officer. Thereafter, the plaintiff requested certain financial data in addition to the routine report, and also asked that Hodson advise the members of their rights under LMRDA. Both of these requests were denied. At the second meeting on October 13, 1974, Wiglesworth attempted to raise a point of order relative to the eligibility of shop stewards to vote. Hodson declined to pass upon this question and once again refused Wiglesworth's request for financial data and advice to the members of their LMRDA rights. Members of the Local who testified at the trial differed as to whether Wiglesworth was given a fair opportunity to speak at the two meetings.[3] Hodson

[3] Wiglesworth might fairly be characterized as an activist. He candidly testified that he had personally voiced his complaints against the Local's leadership to some 1800 of the 2800 members, and had distributed literature expressing his views, including a reproduction of the complaint filed in the present case. During the trial in the district court Wiglesworth's counsel described him as "a knowledgeable, creative, vibrant personality," stating further "you bring up a topic in a Union meeting and Welford Wiglesworth is going to comment on it. * * * He is troublesome. He opposes things; he has his own point of view, makes points of order." APP. Vol. II, 860.

testified that Wiglesworth's behavior at the meetings was highly disruptive, and that the financial data requested by him would have been made available at the Union hall upon reasonable notice. Hodson also said that the LMRDA rights were delineated in the Local Bylaws, copies of which were available to the members. On the other hand, Glen F. French, who was Secretary-Treasurer of the Local at the time of the meetings, testified that in his opinion Wiglesworth was improperly called out of order.

Wiglesworth did not seek a settlement of his dispute through the grievance procedures as required by the Constitution of the International Union, and the primary question upon this appeal is whether the district court erred in denying the motion of the defendants to dismiss the complaint because of the failure of the plaintiff to exhaust the available internal Union remedies.[4]

The qualified limitation on the jurisdiction of federal courts in suits brought under Section 102 of the LMRDA is set forth in Section 101(a)(4), 29 U.S.C. §411(a)(4):

> "No labor organization shall limit the right of any member thereof to institute an action in any court, * * * *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof * * *."

[4]The Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Article XIX, Section 12(a) provides:

> "Every member, officer, elected Business Agent, Local Union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered or who claims to be aggrieved, shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal or agency against the International Union, any subordinate body or any officer or employee thereof."

While Section 101 has its doctrinal roots in the common law,[5] it is an expression of Congressional labor policy that places upon the federal courts "the duty to formulate federal law regarding a union member's obligation to exhaust the internal union remedies before seeking judicial vindication of those rights." *Detroy v. American Guild of Variety Artists*, 286 F.2d 75, 79 (2 Cir. 1961). In *Detroy* the relevant policy considerations were stated as follows:

> "The Congressionally approved policy of first permitting unions to correct their own wrongs is rooted in the desire to stimulate labor organizations to take the initiative and independently to establish honest and democratic procedures. See Cox, The Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 609, 615 (1959). Other policies, as well, underlie the exhaustion rule. The possibility that corrective action within the union will render a member's complaint moot suggests that, in the interest of conserving judicial resources, no court step in before the union is given its opportunity. Moreover, courts may find valuable the assistance provided by prior consideration of the issues by appellate union tribunals." *Id.*

The court went on to observe, however, that "if the state of facts is such that immediate judicial relief is warranted, Congress' acceptance of the exhaustion

[5]See the discussion in Summers, *The Law of Union Discipline: What the Courts Do in Fact*," 70 Yale L.J. 175, 209 (1960).

doctrine as applied to the generality of cases should not bar an appropriate remedy in proper circumstances,"[6] and it is well settled in our own circuit, as well as others, "that internal union remedies need not be exhausted where the action taken by the Union is 'void'." *Simmons v. Avisco, Local 713, Textile Workers Union*, 350 F.2d 1012, 1016 (4 Cir. 1965); *Eisman v. Baltimore Reg. Joint Bd. of Amal. Cloth. Wkrs.*, 352 F. Supp. 429, 434 (D. Md. 1972) *aff'd* 496 F.2d 1313 (4 Cir. 1974).

In denying the defendant's dismissal motion in the present case, the district judge placed primary reliance upon *Eisman*, a case in which the court applied the doctrine of voidness to a "situation in which 'conceded or easily determined facts show a serious violation of the plaintiff's rights' such as to amount to a denial of fundamental fairness." 352 F.Supp, at 434. In *Eisman* the plaintiff had been expelled from the union upon charges of which he had received no notice prior to a disciplinary hearing and the decision of the district court in that case was consonant with our observation in *Simmons v. Avisco, Local 613, Textile Workers Union, supra,* that the courts had applied the concept of voidness "to proceedings where no proper notice was given, where the tribunal was biased, where the offense charged was not one specified in the union constitution or where there have been other substantial jurisdictional defects or a lack of fundamental fairness." 350 F.2d., at 1017.

Both *Eisman* and *Simmons* quoted from Judge Lumbard's opinion in *Libutti v. Di Brizzi*, 337 F.2d 216 (2 Cir. 1964), *aff'd on reh.* 343 F.2d 460 (2 Cir. 1965), but the quoted language must necessarily be read in the light of his complete observation on the subject:

> "Voidness is an elastic concept. Because it is tied up with the merits of the claim, its indiscriminate application could reduce the exhaustion requirement to the tautology that a plaintiff can find present relief in the courts only if his claim has legal merit. * * * That this is a danger, however, does not mean that it is an inevitable result of applying the exception. When conceded or easily determined facts show a serious violation of the plaintiff's rights, the reasons for requiring exhaustion are absent: the commitment of judicial resources is not great; the risk of misconstruing procedures unfamiliar to the court is slight; a sufficient remedy given by the union tribunal would have to approximate that offered by the court. Where, as in this case, conceded facts show a serious violation of a fundamental right, we hold that plaintiffs need not exhaust their union remedies." 337 F.2d, at 219.

It is readily apparent that the present case does not satisfy the criteria which would justify the application of the voidness concept explicated in *Libbutti.* The facts necessary to show a serious violation of Wiglesworth's rights were neither conceded nor easily determinable; and consideration of the conflicting evidence required a substantial commitment of judicial resources and an excursion by the court into the relatively unfamiliar field of internal union procedures.

Wiglesworth has not been expelled or suspended from the union, and his complaint, at best, charges departures from the basic rules of orderly, democratic, parliamentary procedures by the president of the local union. In this respect, his case is quite similar to *Harris*

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[6] Detroy v. American Guild of Variety Artists, 286 F.2d 75, (2 Cir. 1961).

v. International Longshoremen's Asso., Local 1291, 321 F.2d 801, 805 (3 Cir. 1963), where the court, in holding that exhaustion was necessary, stated:

> "The proviso of section 101(a)(4). that a 'member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time)', reflects an effort to encourage mature, democratic self-government of labor organizations through the development of internal procedures for the correction of abuses by union officials and at the same time to provide reasonably expeditious judicial relief to union members who have been denied the fundamental rights guaranteed by Title 1 of the L.M.R.D.A."

The district court also concluded that exhaustion was not required in this case since for Wiglesworth the "internal grievance procedures would have been futile." The court's conclusion on this point was based primarily upon the plaintiff's experience with the internal union grievance procedures incident to his unsuccessful contest with Hodson in the 1972 Local election. However, under the International Constitution two routes were open to Wiglesworth and in neither of these would Hodson have participated in the decisional process. First, Wiglesworth could have brought charges against Hodson before the Local Executive Board[7]

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[7] International Constitution, Art. XIX, reads in pertinent part:

> "Section 1 (a). A member or officer of a Local Union charged by any other member of the Local Union with any offense constituting a violation of this Constitution, shall, unless otherwise provided in this Constitution, be tried by the Local Union Executive Board. * * * If either the President or Secretary-Treasurer of the Local Union is charged or is preferring the charges, or is unable to attend the hearing for any reason, the other officer shall appoint the substitute.
>
> * * * *

[footnote continued]

which is composed of the officers of the Local and three trustees. There is nothing to indicate that such a forum would not have granted Wiglesworth a fair hearing since under the Union procedure French, as Secretary-Treasurer, would have been called upon to appoint a substitute for Hodson in the hearing. In view of French's even-handed testimony at the trial of this case there is no suggestion that he would have been prejudiced against Wiglesworth in any way, or would have been anything other than fair and impartial. Under this administrative route an adverse decision at the first level could have been appealed to the Executive Board of the Joint Council and, if necessary, from there to the International General Executive Board.[8]

The other option open to Wiglesworth was to bring charges against the Local before the Executive Board of the Joint Council.[9] An adverse decision before the

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> Section 2 (a). In the event disciplinary action is taken against the accused, he or she may take an appeal from the decision of the Local Union Executive Board to the Executive Board of the Joint Council, if one exists; otherwise the appeal shall be taken to the General Executive Board. Appeals from decisions of the Executive Board of Joint Councils may be taken to the General Executive Board. * * *
>
> * * * *
>
> (e). Any party to a case, regardless of whether such party is the accused or not, being aggrieved of a decision rendered in the case shall be entitled to the same rights of appeal as are hereinbefore provided for accused.
>
> * * * * *."

[8] *Id.*

[9] International Constitution, Art. XIX:

> "Section 3 (a). Whenever charges are preferred against a Local Union * * * such charges shall be filed in writing in duplicate with the Secretary of the trial body, and shall be served personally or by registered or certified mail on the

[footnote continued]

Council could have been appealed to the International General Executive Board and from there to the International Convention.[10]

In our opinion, the out-of-hand rejection of these internal procedures flies in the face of the philosophy underlying the LMRDA. "Democratic processes atrophy when they are not exercised; union members will have no interest in improving their organizations' internal adjustment procedures if they never are required to use them."[11] It should be borne in mind that the requirement of exhaustion under Section 101 is merely a threshold step for entree to the federal courts, and the four-month restriction provides ample protection against any abuse or undue delay in the Union's internal procedures. It occurs to us that it would be both unwarranted and unwise in a case such as this for the court to freely assume the position of post-parliamentarian for a local union meeting without first requiring exhaustion on the part of the plaintiff. As stated in *Gurton v. Arons*, 339 F.2d 371, 375 (2 Cir. 1964), "[t]he provisions of the L.M.R.D.A. were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of unions."

Secretary-Treasurer of the Local Union or the Joint Council or other subordinate body so charged. If the charges are against the Local Union and trial shall be by the executive Board of the Joint Council * * *.

* * * *

(c). Appeals from decisions on charges against Local Unions * * * shall be taken to the General Executive Board and from it to the Convention. * * *."

[10] *Id.*

[11] Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harvard L. Rev. 851, 869 (1960).

Since we conclude that the plaintiff should have been required to exhaust his available union remedies before seeking redress in the district court, the judgment is reversed and the case remanded with directions to dismiss the complaint.

REVERSED and REMANDED WITH DIRECTIONS.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 75-2191

Welford Wiglesworth, Jr.,
Appellee,

v.

Teamsters Local Union No. 592,
William A. Hodson, President of
Teamsters Union No. 592,
Appellant.

ORDER

Upon consideration of the appellee's petition for rehearing and suggestion for rehearing en banc and in the absence of a request of a poll of the entire court as provided by Rule 35(b) of the Federal Rules of Appellate Procedure,

IT IS ORDERED that the petition for rehearing is denied.

For the Court - By Direction

/s/ William K. Slate, II
Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
For The Eastern District of Virginia
Richmond Division

Civil Action No. 74-0524-R

WELFORD WIGLESWORTH, JR.

v.

TEAMSTERS LOCAL UNION NO. 592, et al.,

ORDER

In accordance with the judgment and mandate rendered by the United States Court of Appeals for the Fourth Circuit in the above action (No. 75-2191, 12 November 1976), it is ADJUDGED and ORDERED that the complaint in this action be, and the same is hereby, DISMISSED. In accordance with Fed. R. App. Pro. 39(a), defendants shall recover from plaintiff their allowable costs upon application to this Court.

Let the Clerk send a copy of this order to all counsel of record.

/s/ D. Dortch Warriner
United States District Judge

Date: 23 Nov. 1976

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
For The Eastern District of Virginia
Richmond Division

[Filed September 29, 1975]

Civil Action No. 74-0524-R

WELFORD WIGGLESWORTH, JR.

v.

TEAMSTERS LOCAL 592, et al.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As Stated From The Bench: 7 September 1975
Before: D. Dortch Warriner
United States District Judge

THE COURT: Gentlemen, this is an extremely difficult case for the Court to decide. The Court appreciates the efforts on the part of counsel for both parties to bring before the Court all of the evidence bearing on the issues.

You have each either brought before the Court or had available to the Court numbers of witnesses. You have each spent untold hours researching the law, briefing the law, presenting the law to the Court for the Court to consider attempting to arrive at a decision.

I will say in all candor that, as the evidence has unfolded and as argument has gone forward at various points, the Court had wavered first one way and then the other. Perhaps that is an unjudicious remark.

The Court is probably supposed to know everything, but I will say that this Court does not know everything.

It certainly has no preconceived notions as to how the case should be disposed of. However, the Court must judge the case on the evidence and on the law, and that is what I have attempted to do. I am required by law, by the rules of court, to make certain findings of fact and conclusions of law, but I think to set the stage for that endeavor, it might be helpful if we read certain pertinent portions of the statute that we are concerned with here today.

401(a):

> The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.
>
> (b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the

public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act of 1947 as amended. . . .

Section 411, Bill of Rights of Members of Labor Organizations:

(a)(1) Equal rights. Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere

with its performance of its legal or contractual obligations.

. . . .

(4) Protection of the right to sue. No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof. . . .

(5) Safeguards against improper disciplinary action. No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

Section 412. Civil Enforcement. Any person whose rights are secured by the provisions of this title . . . have been infringed by any violation of this title may bring a civil action in district court of the United States for such relief, (including injunctions) as may be appropriate. Any such action against labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or

where the principal office of such labor organization is located.

There are, of course, other provisions of the Act, but I think that gives the flavor of the Act and gives the basis upon which the Congress enacted the legislation.

Now, both parties have submitted a set of proposed findings of fact and conclusions of law. The Court has considered both sets of findings of fact and has determined from the evidence that portions of each contain facts which have been established by the evidence.

One of the difficult parts of this case is that a mere decision of what the facts are is not dispositive of what the law says results from those facts, because quite a bit of it is a matter of degree. The Court will recite for the record the specific findings of facts requested by the parties as to which the Court concurs.

The Court finds that the defendant Teamster Local 592 is a labor organization; the Defendant William Hodson is the Executive Officer and President of Local 592; the Plaintiff Welford Wigglesworth is a member in good standing of Local 592.

On September 8, 1974 the monthly meeting of Defendant Local 592 was held. The Defendant Hodson opened the floor to discussion on whether the monthly union dues would be raised from $10 a month to $12 a month. A reason given by Defendant Hodson for the dues increase was to enable the Local to organize the Richmond Police Department into the Teamsters. Increased operating cost as a result of inflation was also specified by Mr. Hodson. At that meeting Plaintiff attempted to voice his opposition to this proposal. Defendant Hodson unreasonably curtailed this expression of opinion and threatened to eject Plaintiff from the meeting.

Mr. Wigglesworth, during the course of the meeting, requested detailed financial information concerning sums paid by the Local to its lawyer between May and August of 1974. Defendant Hodson denied this request and ordered the Plaintiff to sit down and be quiet. Plaintiff further requested that Defendant Hodson advise the membership of Local 592 of their rights under the LMRDA. Defendant Hodson did not comply with these requests at that time.

At the September 8, 1974 meeting Defendant Hodson informed the membership that a vote on the dues increase would be the first order of business at the Union meeting of October 13, 1974. The meeting to vote on the dues increase was held October 13, 1974. The floor was thrown open for continued debate on the subject of the dues increase, and after approximately an hour and 45 minutes the actual vote began.

Some of the members who arrived at the original time may have left without voting. At the October 13, 1974 meeting, Plaintiff unsuccessfully attempted to state his opposition to the dues increase and was unable fully to express himself as a result of action by the presiding officer, Mr. Hodson.

Defendant Hodson refused to rule on Plaintiff's point of order at the October 13th meeting, that point of order being that stewards and other persons who did not pay their dues should not be permitted to vote on a dues increase. There were somewhere between 60 and 80 Union shop stewards of the Local who were present at the meeting. The Union's stewards were permitted to cast their votes.

A member of the Union, George Coley, offered a point of order as to absentee balloting for those who were prevented from attending because of work. The Chair did not rule on the point of order with respect to

absentee balloting, but ruled instead that Mr. Coley was out of order.

At the October 13th meeting, Plaintiff requested that the Defendants live up to the dictates of the LMRDA and that the presiding officer advise the members of their rights under the LMRDA. Mr. Hodson did not accede to the request in those terms.

At the meeting the Plaintiff requested financial information concerning money paid to counsel for the Union as a result of the Richmond Police Department organizational effort. The presiding officer, Mr. Hodson, directed that this information not be given at that time.

Prior to instituting this lawsuit against the Defendants, the Plaintiff did not seek relief through available administrative Union procedures either on the local level or on the International level. On two occasions Plaintiff has run for the presidency of the Defendant Union against the Defendant Hodson and has, each time, been unsuccessful.

On the first occasion Plaintiff claimed that the election was not conducted properly. He appealed ultimately to the Labor Department and upon a showing of probable cause of election fraud, Defendant Hodson consented to a rerun election which was held and conducted by the U.S. Labor Department at Defendant Union's request.

In the rerun Plaintiff finished third in a field of three and the Defendant Hodson again was elected president. All members, including Plaintiff, have had available to them upon request information pertaining to their rights as members of the Union as set forth in the bylaws and Constitution of the Union. The fact that these rights are secured by federal law is not disclosed in the material made available by the Union.

The Plaintiff himself has had copies of the Union's Constitution and bylaws which were made available to him prior to the September 8th and October 13th meetings. The Plaintiff and the Defendant Hodson have had a long history of open hostility.

As the Court stated, having adopted the aforementioned findings of fact, the Court still does not thereby, *ipso facto*, reach a decision in the case. The case has at least two aspects.

The first aspect that the Court has to concern itself with is the issue of the exhaustion of remedies. The requirement of exhaustion of remedies is contained in Section 411. It is not mentioned in Section 412, which specifically deals with the question of the right to file civil actions.

However, a fair reading of the two sections together indicates that Congress intended, and properly so, that in actions involving the Union, actions against the Union, the Union should have first a reasonable opportunity to correct its own errors, if any such exist.

The question arises as to whether or not this Plaintiff behaved reasonably in bypassing the internal relief provisions of the Constitution and bylaws of his Union.

The history of the Plaintiff's efforts to exhaust when it came to a dispute between himself and his Union, is different from the history of the Plaintiff's efforts to exhaust when there came a dispute between himself and his employer.

On numerous occasions Plaintiff sought the help of his Union in disputes that he had with his employer, and on numerous occasions the Union responded as it is required by law to do and as it is required to do by its own aims and desires and hopes for its members. The Union attempted to meet the grievances which the

Plaintiff had, sometimes resolving them favorably to the Plaintiff, sometimes not, but most of the time favorably to the Plaintiff.

The history of the Plaintiff's disputes between himself and the Union are somewhat different. A major dispute brought out in the evidence was that concerning the election of 1972. At that time the Plaintiff followed the appeal procedures of the Union and instead of being met with helpfulness on the part of the hierarchy of the Union, he was met with the sort of obstinacy that Mr. Campbell illustrated here on the witness stand today: instead of coming to the defense of the rank and file member, or at least coming to his aid by giving evidence fairly and impartially and honestly, he answered by saying that since he had not been summonsed in accordance with established procedures, he would not respond at all.

The President of the International Union, Mr. Fitz-Simmons, was appealed to in the course of those disputes, and the undisputed evidence is that the President refused to respond in any way to Plaintiff's entreaties.

After having exhausted unsuccessfully the Union procedures for resolving the dispute between the Plaintiff and his Union, the Plaintiff then appealed to the Federal Government, the Department of Labor. The Department of Labor conducted an investigation and found probable cause to believe that the election had not been properly conducted under the law, that is that election fraud infested the elections. At this juncture the Union consented to a re-election.

It would seem to me that the Plaintiff, having had that experience, would not be expected to have confidence in the Union's grievance procedures where the dispute was between him, a rank and file member,

and the Union. This is an entirely different situation from one where the dispute is between the rank and file member and his employer or perhaps a fellow Union member.

After 1972, when the Plaintiff ran for office unsuccessfully, there emerged a pattern of conduct of the Union, operating through its executive officer, toward the Plaintiff. This was not a pattern that included expulsion or suspension; it was a pattern which included nibbling away at the cracker to ultimately leave it without substance.

Now, this is not simply an issue of unequal treatment of a rank and file member; it is unequal treatment of a rank and file member who sought elective office as president, a person who has even higher rights because of the strong desire on the part of Congress and, I am sure of responsible Union officials, that all persons feel free to run for office, to contest offices in the Union, and that no one be discouraged, either subtly or overtly, from seeking office.

The pattern emerged after this Plaintiff had sought office and it has continued. No one act that the Court has found in the findings of fact, no one act is in and of itself such as to rise to a violation of the Act, but the combination of acts, in the Court's opinion, is a clear violation of the intent of Congress, that members of the Union shall be treated by their officers in accordance with "the highest standards of responsibility and ethical conduct."

The Plaintiff here has been mistreated by his officers, persons who, under the Act, and in good conscience and in good faith, should uphold the highest standards of treatment, and, to the contrary, attempted to intimidate, threaten, stifle, and put in disrepute, a member of the Union. If that is not a violation of the

Act, under a rational and reasonable reading of the Act, then the Act has no efficacy. If the Act means anything, it means that a member of the Union cannot be treated as Mr. Wigglesworth has been treated.

I think that one of the most significant pieces of testimony in the trial of this case was the testimony of one of the witnesses who said, "We don't throw them out any more; we just set them down."

There was a time, I suppose, when the Courts had to concern themselves with whether or not the member was thrown out. If he was, it was a violation of the Act; if he wasn't, it was not a violation of the Act. But I am certain that those persons – and I trust there are few – who disregard the dictates of the Act have learned from these decisions the maxim "Don't throw them out, just set them down." So that is the guise in which we have the case presented to us.

We have learned in the hundreds of Civil Rights cases, which the Federal Courts of this nation have decided, that it matters not how subtle the deprivation may be, if it is a deprivation, then the Courts will protect the persons deprived. The deprivations suffered by Plaintiff may be termed subtle, but I don't suppose to the man who is being subjected to such "subtle deprivations" they seem so subtle. Perhaps they feel like bludgeons. Be they subtle or be they bludgeons, they are effective. It would take a man of extraordinary determination and zeal to continue to fight in the face of the gnawing away at his rights, which Mr. Wigglesworth has been subject to.

The Court has read not all of the cases cited but many of them. The Court has read the law; the Court has read the Constitution of the Union and the bylaws.

If the Court had only to consider whether the Union had complied with its own Constitution and bylaws –

which the Court is not concerned with in this case – the Court would have to conclude that indeed it had not.

The Court looks to the Act. The Court looks to the reason for the Act. The Court looks to the purpose for which the Congress enacted the legislation. Looking to all of those, the Court finds that the Plaintiff was deprived of his rights under the Act; that internal grievance procedures would have been futile; that he is properly before the Court, and on that basis, the Court will render a judgment for the Plaintiff.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION
[Filed September 26, 1975]

WELFORD WIGGLESWORTH, JR.	:	
	:	
v.	:	CIVIL ACTION
	:	NO: *74-0524-R*
TEAMSTERS LOCAL UNION	:	
NO: 592, et al	:	

ORDER

In accordance with this Court's findings of fact and conclusions of law issued on 7 September 1975, it is by the Court this 26th day of September, 1975, ADJUDGED and ORDERED that:

1. Defendants, Teamsters Local Union No. 592, its successor and successors, and William A. Hodson, President of said local, his successor and successors, shall refrain from denying or causing to be denied the plaintiff and the members of Local 592 their rights under the Labor Management Reporting and Disclosure Act of 1959, as amended.

2. Defendants, their successor and successors, shall in no way threaten, interfere with, coerce, fine, suspend, expel, penalize or otherwise discipline the plaintiff and the members of Local 592 for their candidacy for union office.

3. Defendants, their successor and successors, shall in no way threaten, interfere with, coerce, fine, suspend, expel, penalize or otherwise discipline or cause to threaten, interfere with, coerce, fine, suspend, expel, penalize, or otherwise discipline those witnesses who testified or who were summonsed to testify in this proceeding on account of their being so summonsed or on account of their having so testified.

4. Defendants, their successor and successors, shall in no way take or cause to be taken economic reprisals against the plaintiff or those witnesses who testified or were summonsed to testify.

5. Defendants, their successor and successors, shall, at least once every three months advise the union membership in attendance at Local meetings of their rights under the Labor Management Reporting and Disclosure Act of 1951, as amended, said advise to commence at the first regular meeting after entry of this order. This directive may be accomplished by reading the Local's by-laws and stating that the rights therein set forth are secured by federal law.

6. Defendants, their successor and successors shall mail copies of the Labor Management Reporting and Disclosure Act to the membership of Local 592 within one month of the entry of this order.

7. Defendants, their successor and successors, shall make available at each of its monthly meetings the vouchers, bills, invoices and other specific financial data upon which the union has based its financial reports and statements. Said financial materials shall be open for inspection at the end of each union meeting.

8. Plaintiff has judgment against the defendants and plaintiff is hereby awarded compensatory damages of $13,000.00, reasonable attorneys' fees of $19,000.00, and costs and expenses of this litigation of $2,797.86, said sums to be paid out of the treasury of defendant Local 592, its successor and successors.

The Clerk is directed to enter judgment accordingly.

Let the Clerk send a copy of this order to counsel of record.

/s/ D. DORTCH WARRINER
U.S. DISTRICT JUDGE
United States District Judge

Date: SEP 26 1975

APPENDIX F

UNITED STATES DISTRICT COURT
for the
Eastern District of Virginia – Richmond Division
Civil Action File No. 74-0524-R

WELFORD WIGLESWORTH, JR.,
v.
TEAMSTERS LOCAL UNION NO. 592 and
WILLIAM A. HODSON.

JUDGMENT

[Filed September 26, 1975]

This action came on for trial before the Court, Honorable D. Dortch Warriner, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered.

It is Ordered and Adjudged that the plaintiff, Welford Wiglesworth, Jr., recover of the defendants, Teamsters Local Union No. 592 and William A. Hodson, compensatory damages of THIRTEEN THOUSAND and no/100 DOLLARS [$13,000.00], reasonable attorneys' fees of NINETEEN THOUSAND and no/100 DOLLARS [$19,000.00], and costs and expenses of this litigation of TWO THOUSAND SEVEN HUNDRED NINETY-SEVEN and 86/100 DOLLARS [$2,797.86], with interest thereon at the rate of NINE (9%) PER CENT per annum from this date.

It Is Further ORDERED said sums to be paid out of the treasury of defendant, Teamsters Local Union No. 592, its successor and successors.

Dated at Richmond, Va. this 26th day of September, 1975.

[Signed by Clerk]

APPENDIX G

[Amended Judgment on Decision by The Court]

UNITED STATES DISTRICT COURT
for the
Eastern District of Virginia - Richmond Division

Civil Action File No. CA-74-0524-R

WELFORD WIGLESWORTH, JR.

vs.

TEAMSTERS LOCAL UNION #592 &
WILLIAM A. HODSON

JUDGMENT

This action came on for trial before the Court, Honorable D. Dortch Warriner, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff, Welford Wiglesworth, Jr. recover of the defendants, Teamsters Local Union #592 & William A. Hodson, compensatory damages of THIRTEEN THOUSAND & no/100 DOLLARS ($13,000.00), reasonable attorney's fees of NINETEEN THOUSAND & no/100 DOLLARS ($19,000.00); and costs & expenses of this litigation of TWO THOUSAND SEVEN HUNDRED NINETY-SEVEN & 86/100 DOLLARS ($2,797.86), with interest thereon at the rate of EIGHT (8) PER CENT per annum from the date of September 26, 1975.

It Is Further ORDERED that said sums to be paid out of the treasury of defendant Teamsters Local Union #592, its successor & successors.

Dated at Richmond, Virginia this 18th day of February, 1976.

/s/ Paul P. Vest, Jr.

Deputy Clerk of Court

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

WELFORD WIGLESWORTH, JR.	:	
	:	
v.	:	CIVIL ACTION
	:	NO: 74-0524-R
TEAMSTERS LOCAL	:	
NO. 592, et al	:	

ORDER

For the reasons set forth in the memorandum this day filed, and deeming it just and proper so to do, it is hereby ADJUDGED and ORDERED that defendants' motion to dismiss the complaint in this action be, and the same is hereby denied.

Let the Clerk send a copy of the memorandum and this order to counsel of record.

/s/D. Dortch Warriner
United States District Judge

Date: Feb. 5, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

WELFORD WIGLESWORTH, JR.	:	
	:	
v.	:	CIVIL ACTION
	:	NO: 74-0524-R
	:	
TEAMSTERS LOCAL	:	
NO. 592, et al	:	

MEMORANDUM

This matter comes before the Court upon defendants' motion to dismiss pursuant to Rule 12(b). It is the position of defendants that the matters involve merely internal disputes within the union and that plaintiff should be required to exhaust his union remedies before appealing to the Court. *Parks v. IBEW*, 314 F.2d 886 (4th Cir. 1963). An examination of plaintiff's complaint, however, shows that it is not concerned with an intraunion dispute but is, instead, concerned with the deprivation of plaintiff's fundamental right to function as a member of the union. If the allegations contained in the complaint are true, it makes no difference whether plaintiff has been suspended from union membership or had any disciplinary action taken against him. Without taking any action against him, plaintiff alleges the union simply takes no account of him. Such action by defendants, if proved, is contrary to *Airline Maintenance Lodge 702, International Association of Machinists and Aerospace Workers v. Loudermilk*, 316 F.2d 445 (2nd Circuit 1963).

If what plaintiff alleges is true, then "conceded or easily determined facts show a serious violation of the

plaintiff's rights" and the plaintiff is properly before this Court. *Eisman v. Baltimore Reg. Joint Board of Amalgamated Clothing Workers,* 352 F. Supp. 429 (D.Md. 1972), affirmed, 496 F.2d 1313, (4th Cir. 1974).

Defendants' motion to dismiss will be denied.

An appropriate order shall issue.

/s/D. Dortch Warriner
United States District Judge

Date: Feb. 5, 1975

APPENDIX I

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED

TITLE I—BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

Bill of Rights
(29 U.S.C. 411)

Sec. 101. (a)(1) EQUAL RIGHTS—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and by-laws.

(2) FREEDOM OF SPEECH AND ASSEMBLY—Every member of any labor organization shall have the right to meet and assemble freely with other members and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) DUES, INITIATION FEES, AND ASSESSMENTS—Except in the case of a federation of national or international labor organizations, the rates of dues and

initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership referendum conducted by secret ballot; or . . .

(4) PROTECTION OF THE RIGHT TO SUE—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by officer thereof unless such member has been (A) served with written specific charges; (B) given a

reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

CIVIL ENFORCEMENT
(29 U.S.C. 412)

Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located . . .

INFORMATION AS TO ACT
(29 U.S.C. 415)

Sec. 105. Every labor organization shall inform its members concerning the provisions of this Act.

TITLE II—REPORTING BY LABOR ORGANIZATIONS, OFFICERS, AND EMPLOYEES OF LABOR ORGANIZATIONS, AND EMPLOYERS

REPORT OF LABOR ORGANIZATIONS
(29 U.S.C. 431)

Sec. 201 . . .

(c) Every labor organization required to submit a report under this title shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of

any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action . . .

TITLE IV—ELECTIONS

TERMS OF OFFICE; ELECTION PROCEDURES
(29 U.S.C. 481)

Sec. 401 . . .

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to Section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each

local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title . . .

PROHIBITION ON CERTAIN DISCIPLINE BY LABOR ORGANIZATION
(29 U.S.C. 529)

Sec. 609. It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable in the enforcement of this section . . .

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-1417

WELFORD WIGLESWORTH, JR.,

Petitioner,

V.

TEAMSTERS LOCAL UNION NO. 592, et al.,

Respondents',

RESPONDENTS' BRIEF IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

NO. 76-1417

WELFORD WIGLESWORTH, JR.,

Petitioner,

v.

TEAMSTERS LOCAL UNION NO. 592, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

This lawsuit concerns plaintiff's complaint that at two monthly union meetings in September and October, 1974, plaintiff was not permitted to express himself as a union member because the union President, defendant Hodson, ruled him out of order or limited his amount of speaking time. The District Court found that prior to instituting his lawsuit, plaintiff did not seek relief through available administrative union procedures. This finding is uncontested. In its findings stated

from the bench, the District Court framed the sole issue as being "whether or not this Plaintiff behaved reasonably in by-passing the internal relief provisions of the Constitution and bylaws of his Union."

The primary thrust of plaintiff's Petition (at page 7) is that the Fourth Circuit has departed from the "general rule of law that where a union has taken a position in opposition to that of a plaintiff and makes no indications that it will alter its views, a plaintiff need not exhaust his union remedies" under 29 U.S.C. Sec. 411(a)(4). There has been no departure by the Fourth Circuit from any general rule of law.

The record shows, and the Fourth Circuit so stated, that plaintiff "has not been expelled or suspended from the union, and his complaint, at best, charges departures from the basic rules of orderly, democratic, parliamentary procedures by the president of the local union." In this respect, the Fourth Circuit cites Harris v. International Longshoremen's Asso., Local 1291, 321 F. 2d 801, 805 (3 Cir. 1963), the case which is closest factually to the case at bar, in holding that plaintiff should first have exhausted his available union remedies before instituting his lawsuit.

The cases cited by plaintiff are far afield from the issue at hand. Stated another way, the issue at hand is whether the L.M.R.D.A. is an open invitation to union members, dissatisfied by the conduct of a union meeting by a union officer, to bring suit in federal court against the union and its officer without so much as first attempting to utilize available

union administrative remedies to resolve the dispute. The obvious result of such a specious open invitation is to place the union and its officers in the financial jeopardy of a lawsuit at every union meeting where a member believes that parliamentary rules were not properly administered. In this perspective, parliamentary rules could not safely be applied by the union and its officers in the absence of an all-out, full scale riot at the union meeting. The rash of litigation and the position that federal courts would be placed in is succinctly stated by the Fourth Circuit in its opinion:

> "It occurs to us that it would be both unwarranted and unwise in a case such as this for the court to freely assume the position of post-parliamentarian for a local union meeting without first requiring exhaustion on the part of the plaintiff."

As the evidence showed and the Fourth Circuit so stated, there was a deep and longstanding hostility between plaintiff and defendant Hodson who were union political rivals. Plaintiff ran against Hodson for the office of union President on two occasions, unsuccessfully, each time finishing last in a field of three. The Fourth Circuit further noted the conflicting testimony at trial of members of the union who "differed as to whether Wiglesworth was given a fair opportunity to speak at the two meetings." A resolution of this difference by the trial court, before any available union administrative remedies have been utilized indeed, before there has even been an attempt to utilize them (as here), makes the District Court a post-parliamentarian in perpetual

standby status for each and every union meeting held.

As reflected above, the cases cited by plaintiff are factually inapposite and far afield from the issue at hand. Thus, for example, in Farowitz, the plaintiff had been disciplined and expelled from union membership. Administrative remedies would have been futile because the union in that case had "consistently taken a position contrary to Farowitz' and indeed has been asserting its position in litigation since March 1960." 330 F. 2d 999, 1003. Plaintiff simply argues, in footnote fashion and with no support in the record, that the Fourth Circuit "disregarded the power structure of the Teamsters and the fact that those in power are potent dictators whose influence is far reaching." Acceptance of this premise, for any union, is tantamount to judicial nullification of the statutory exhaustion requirements set forth in 29 U.S.C. Sec. 411(a)(4). Indeed, even the District Court found that most of the time the defendant union represented plaintiff with results favorable to plaintiff in the numerous disputes plaintiff had with his employer.

The District Court relied, however, on its finding that in the union election of 1972, when plaintiff ran for office in a field of three that included defendant Hodson, who at that time was (but who is no longer) union President, "the President of the International Union, Mr. Fitzsimmons, was appealed to in the course of those disputes, and the undisputed evidence is that the President refused to respond in any way to Plaintiff's entreaties." The District Court also criticized

International Union witness Campbell for testifying in part that in connection with the 1972 election, he had not been summonsed by plaintiff in accordance with established procedures. Bearing in mind that the 1972 union election was not the subject of plaintiff's complaint, but rather, only the parliamentary procedures employed at the two monthly union meetings held in September and October of 1974, almost two years later, the improper usage of this evidence by the District Court to avoid the exhaustion requirement becomes apparent. That the District Court was wrong, on the record, is borne out by plaintiff's exhibit number 8, appearing at page 033 in the exhibit volume to the appendix of the printed record in the Fourth Circuit.

That exhibit is a determination by the Department of Labor dated July 11, 1973, which recites the following:

1. The local union election was held on December 9 and 10, 1972.

2. Plaintiff complained to the Secretary of Labor in late March, 1973.

3. Upon initiation of the investigation by the Labor Department, the local union agreed to conduct new nominations and a new election, under the supervision of the Secretary of Labor.

4. The rerun election was completed on June 29, 1973.

5. There was probable cause to believe that violations of Title IV of the LMRDA had occurred in the original election of December 9 and 10, 1972, but the violations were remedied by the nominations and election completed on June 29, 1973, under the supervision of the Secretary of Labor.

The record shows that plaintiff finished third (last) in the Labor Department rerun election. At trial, plaintiff specifically testified that the Department of Labor was dishonest.

The District Court assumed that plaintiff's union appeal in the 1972 election was ignored. The assumption was not justified. To the contrary, the record in the Fourth Circuit shows, at joint appendix pages 308, 357-358, that in the 1972 union election in which plaintiff was a candidate for office, plaintiff utilized union remedies on the local and International level to obtain access to union records, and received satisfaction at both levels. This record referred to comes from the trial testimony of plaintiff, himself. Further, the local union had some 2,800 members, and during the union administrative election appeal process initiated by plaintiff, the union concluded, after plaintiff complained to the Secretary of Labor before the union appeal process had a chance to be completed, that it would be more practical and less expensive to consent to a Labor Department rerun election. Thus, the disputed election was held on December 9 and 10, 1972; plaintiff appealed to the International thereafter; his complaint was received by the Labor Department on March 26, 1973, less than four months after the disputed election; the local union agreed to a rerun election shortly thereafter; and the rerun election was completed (as well as the re-nominations) by June 29, 1973. Plaintiff had

thus received full relief on his complaint over a difficult and complex election process, involving some 2,800 members, in less than seven months through the cooperation of the local union.

Other cases cited by plaintiff are factually inapposite. Amalgamated Clothing Workers, indeed, concluded that exhaustion was required, citing the Harris case upon which the Fourth Circuit relied in its opinion. 473 F. 2d 1303, 1308. In Semancik, 466 F. 2d at 151, the court observed that "the (union) appeal structure gave little hope of providing the plaintiffs (threatened with union discipline of fines, suspension, or expulsion from union membership) with an impartial forum ...." So, too, in Fulton Lodge, 415 F. 2d 212, 216, the court stated that "the union is the victim of its own appellate review structure." In Fulton, the plaintiff had been expelled from union membership. So, too, in Verville the union sought to discipline the plaintiffs for crossing a picket line; in McGraw, the plaintiff was fined by the union and suspended from membership; in Ryan the plaintiff was expelled from union membership; and in Retail Clerks, plaintiffs were fired by the union from their paid jobs as union Organizing Directors after they had opposed, during the union election, the eventual winner thereof. Also noteworthy in McGraw is the trial court's finding that plaintiff in that case "had resorted to the internal union hearing procedures and that more than four months (pursuant to 29 U.S.C. Sec. 411(a)(4)) had elapsed from the date of the hearing before the Local Union Executive Board before the present action was filed." 341 F. 2d at 711.

Thus, the cases cited by plaintiff involve fines, suspension, expulsion from union membership or loss of union jobs, and in its opinion the Fourth Circuit specifically notes the absence of any of these elements in the case at bar, and the resulting inapplicability of the doctrine of voidness in the Fourth Circuit's Eisman precedent. As the Fourth Circuit correctly observed, plaintiff's "complaint, at best, charges departures from the basic rules of orderly, democratic, parliamentary procedures by the president of the local union" at two union meetings. In concluding, based on solid evidence in the record (including not only the union constitution and bylaws, but the testimony of plaintiff's own witness, French), that there were adequate and available union administrative remedies which plaintiff should have utilized first, the Fourth Circuit was likewise on solid ground in giving some meaning to the language and wisdom behind the exhaustion requirement of 29 U.S.C. Sec. 411(a)(4). Unlike cases cited by plaintiff, the record shows (including the testimony of plaintiff's own witness, French) that impartial union forums were available to plaintiff within the statutory four-month framework. The Fourth Circuit reasoned against plaintiff's argued role for the federal courts to act as perpetual standby post-parliamentarians for union meetings, nullifying utilization of available union administrative remedies. The Fourth Circuit correctly stated that the District Court's "out-of-hand rejection of these internal procedures flies in the face of the philosophy underlying the LMRDA." This rejection by the District Court, both on the evidence and the law as well, was clearly erroneous.

In footnote 4 at page 11 of the Petition, plaintiff misstates the record when he argues that from 1972 forward, he was not allowed "to speak in union meetings." At trial, plaintiff's approach was that he could not speak as much or as often or as long or whenever he wished to speak. In fact, as an example, in answers to interrogatories plaintiff stated that, with respect to the two union meetings in dispute, "I spoke several times at both meetings" (Fourth Circuit joint appendix, pages 051-052).

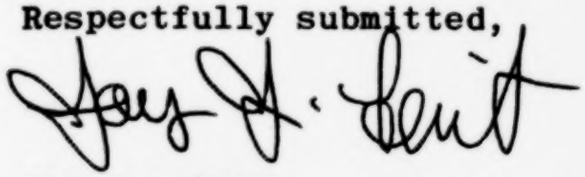
In footnote 6 of plaintiff's Petition, it is argued that the Fourth Circuit ignored the issues of (1) whether exhaustion was necessary on plaintiff's complaint that the union failed to advise the membership of its L.M.R.D.A. rights, and (2) his claim that he was denied financial information. The District Court specifically found that plaintiff and all members have had available to them from the union the union constitution and bylaws setting forth their rights as union members. These documents do not state that the rights are in fact also secured by federal law, but during oral argument, the Fourth Circuit expressed to plaintiff its difficulty in finding fault with this so long as the rights of the membership are set forth in the documents,and the documents are made available, as they were, to the membership.

There was no issue of financial information, since this issue was struck by the District Court prior to trial, as plaintiff's counsel well knows (see joint appendix in Fourth Circuit, pages 038, 176-177). No cross-appeal on any of the struck issues has been filed by plaintiff. During oral argument in the Fourth Circuit, the lack

of any cross-appeal by the plaintiff was noted by the Court to plaintiff's counsel.

The federal courts should not be assigned the impossible role of perpetual standby post-parliamentarians for union meetings, bypassing the mandate and wisdom of the statutory exhaustion requirement in 29 U.S.C. Sec. 411(a)(4). Review is unwarranted, and plaintiff's petition should be denied.

Respectfully submitted,



JAY J. LEVIT
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May 12, 1977

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1417

WELFORD WIGLESWORTH, JR.,

Petitioner,

v.

TEAMSTERS LOCAL UNION NO. 592, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1417

WELFORD WIGLESWORTH, JR.,

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v.

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ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

1. Both Respondent and the Fourth Circuit below incorrectly rely on the Third Circuit's decision in *Harris v. International Longshoremen's Asso., Local 129,* 321 F.2d 801 (3rd Cir. 1963), in arguing that plaintiff under Section 104(a)(4) of the L.M.R.D.A., 29 U.S.C. §411(a)(4), was obligated to exhaust existing union hearing procedures prior to instituting this action in the District Court. *Harris* is not only factually inapposite to the controversy presently before the Court, but also

contains language indicating that where, as in the present case, it would have been futile for the Plaintiff to follow the union hearing procedures, exhaustion is not required.

As noted in the Petition to this Court (p. 8, n.2), Wiglesworth had fruitlessly exhausted his internal remedies in the election of 1972, all the way up the union chain of command to the President of the International Union, Frank Fitzsimmons. Plaintiff received no word on the status of his grievance from Mr. Fitzsimmons' office. Furthermore, under Article XIX of the Teamsters' Constitution (Petition, App. A, p. 8a) a member is not afforded the right to redress such grievances under the L.M.R.D.A., as: 1) freedom of speech 2) freedom to participate in the union, 3) freedom to speak out against the union without fear of redress; 4) the right to be advised of his rights under the L.M.R.D.A.; 5) the right to be given financial information and numerous other rights under the L.M.R.D.A. The inadequacy of the union's internal procedures is illustrated by the fact that the District Court ordered the Local's by-laws to be amended to state that "the rights therein set forth are secured by federal law," and the District Court's further order that copies of the L.M.R.D.A. be mailed to all members of the Local within one month of the entry of the order. (Plaintiff's Petition, App. D, p. 27a).

Thus, the circumstances surrounding this controversy, contrast significantly with the factual pattern present in *Harris*. Unlike the situation present here, in *Harris*, "The plaintiffs (did) not seriously question that such disciplinary proceedings under the I.L.A. constitution could not give them the relief which they (sought). *Harris, supra* at 804. Additionally, the *Harris* court noted that under the union procedures there involved

"a substantial likelihood (existed) that corrective action would be forthcoming within the statutory period if plaintiffs proved their charges." Wiglesworth's inability to obtain *any* response from the Teamsters' hierarchy in 1972 coupled with the fact that the local executive board consisted solely of Hodson appointees and those who had run on his ticket in the 1972 campaign indicates that neither of the two paths open to Wiglesworth under Article XIX of the Teamster's Constitution (Petition App. A, p. 8a) could reasonably be believed by Wiglesworth to have afforded any likelihood of a fair hearing or corrective remedy. In short, unlike the situation described by the *Harris* Court, the appeals structure confronting Wiglesworth was illusory and inadequate to redress his grievance under the L.M.R.D.A., and therefore Wiglesworth was not obligated to exhaust union procedures. *Burke v. International Brotherhood of Boilermakers, Iron Shipbuilders, Forgers and Helpers,* 417 F.2d 1063 (9th Cir. 1969).

The Third Circuit, itself applied the limiting language of the *Harris* opinion in its decision of *Baron v. North Jersey Newspaper Guild, Local 173, American Newspaper Guild, AFL-CIO,* 342 F.2d 423 (3rd Cir. 1965). The Court cited *Harris* for the proposition that a party need not exhaust his union grievance procedures, "where a showing has been made that a union cannot do substantial justice because of the inadequacy of procedural mechanisms or the existence of clear substantive bias against the party seeking judicial relief." *Id.* at 424.

In *Harris* the court indicated that exhaustion was required because there was nothing in the record indicating "that it would have been futile for (the member) to make a good faith effort to follow the

union hearing procedures . . ." 321 F.2d at 806. Thus, unlike Wiglesworth, in *Harris* the plaintiffs did not question the effectiveness of the union grievance machinery, nor had they concluded that the grievance process would have been futile. Unlike Wiglesworth, the plaintiffs in *Harris* were not confronted with a precedurally inadequate union grievance mechanism nor were they faced with the consistently hostile union hierarchy confronting Wiglesworth.[1]

2. At page 3 of its Brief, Respondent quotes the Fourth Circuit's statement that the court will not "assume the role of post-parliamentarian without first requiring exhaustion on the part of the plaintiff." This language is disturbing not only because it mistates the importance of this case, but also because it portends a ruling by the Fourth Circuit that Wiglesworth's L.M.R.D.A. claim is without merit. While the Fourth Circuit found that the actions taken against Wiglesworth constituted at best a departure from the basic rules of orderly, democratic procedures (Petition, App. A, pp. 9a-10a), it is clear that Wiglesworth's claim involves much more than a conflict over union parliamentary procedure. At issue here are the questions of free speech and democracy in the powerful Teamsters Union. As Judge Warriner noted so accurately below:

> The Plaintiff here has been mistreated by his officers, persons who, under the Act, and in good conscience and in good faith, should uphold the highest standards of treatment, and, to the contrary, attempted to intimidate, threaten, stifle,

[1]The detailed fact pattern concerning Wiglesworth's dealings with both local and national Teamster leadership is set forth in the District Court's Findings of Fact and Conclusions of Law. (Petition, Appendix D).

> and put in disrepute, a member of the Union. If that is not a violation of the Act, under a reasonable reading of the Act, then the Act has no efficacy. If the Act means anything, it means that a member of the Union cannot be treated as Mr. Wiglesworth has been treated.

While the Fourth Circuit appears to be characterizing Wiglesworth's claim as de minimus infraction of parliamentary procedure (Petition, App. A. pp. 9a-10a), it should be noted that in the *Harris* case on which both the court and respondent rely, the Third Circuit stated that actions similar to those taken by the Teamsters against Wiglesworth constituted violations of the L.M.R.D.A. 321 F.2d at 803. In *Harris*, the court stated that, if proven, Plaintiffs' allegations that the defendant union president knowingly and willfully made erroneous parliamentary rulings, permitted conversations while members were recognized to speak, vilified one of the plaintiffs when he attempted to address a meeting, refused to permit debate on certain debatable questions, and declined to entertain appeals from his rulings, would constitute violations of the L.M.R.D.A. Certainly, Union President Hodson's repeated threats, refusals to recognize, and denial of pertinent financial information to Wiglesworth, also constitutes an L.M.R.D.A. violation under the ruling of the Third Circuit.

The significance of the Teamsters' violations of the L.M.R.D.A. in this case is increased since Wiglesworth was a candidate for the presidency of the Teamsters twice in 1972, and an announced candidate for office in 1975. Thus when Wiglesworth was told to sit down and shut up over and over again, the union was denying Wiglesworth's constituency the right to be heard. The Fourth Circuit's suggestion that Wiglesworth's claim is

insubstantial neglects the power structure of the Teamsters Union, and the ultimate significance of this case. The question before this Court is the extent to which private litigants like Wiglesworth will be afforded an opportunity to protect their L.M.R.D.A. rights. This is a rare and exceptional case in which one man has attempted to enforce his L.M.R.D.A. rights to check union autocracy and corruption.

The Fourth Circuit's ruling in this case has created an overly narrow view not only of the exhaustion requirement of Section 101(a)(4) of the L.M.R.D.A.[2], but also of the union member's federally secured right to be heard under Section 101(a)(2) of the L.M.R.D.A.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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[2]It should be noted that the exhaustion requirement of Section 101(a)(4) of the L.M.R.D.A. is permissive. The provision states "....That such member *may* be required to exhaust reasonable hearing practices . . . within such organization, before instituting legal or administrative proceedings . . ." (emphasis supplied).